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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 101206604-1758-02]

RIN 0648-BA55

Fisheries Off West Coast States; West Coast Salmon Fisheries; Amendment 16 to the Salmon Fishery Management Plan

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues a final rule under authority of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) to implement Amendment 16 to the Pacific Coast Salmon Fishery Management Plan for Commercial and Recreational Salmon Fisheries off the Coasts of Washington, Oregon, and California (Salmon FMP). NMFS approved Amendment 16 on December 16, 2011. This final rule implements components of Amendment 16 that bring the Salmon FMP into compliance with the MSA as amended in 2007, and the corresponding revised National Standard 1 Guidelines (NS1Gs) to end and prevent overfishing. Amendment 16 identifies stocks that are in the fishery, establishes status determination criteria (SDC), and specifies overfishing limits (OFLs), acceptable biological catch (ABC), and annual catch limits (ACLs). Amendment 16 also includes “de minimis” fishing provisions that allow for low levels of fishing impacts on stocks that are at low levels of abundance.

DATES: This final rule is effective [INSERT DATE 30 DAYS AFTER DATE OF

PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: This final rule is also accessible on the website of NMFS' Northwest Region (<http://www.nwr.noaa.gov>). Electronic copies of the Environmental Assessment (EA) and current Salmon FMP, through Amendment 16, are available on the Pacific Fishery Management Council's Web site (<http://www.pcouncil.org/>).

FOR FURTHER INFORMATION CONTACT: Peggy Mundy, Northwest Region Salmon Management Division, NMFS, 206-526-4323 or Jennifer Isé, Southwest Region, Sustainable Fisheries Division, NMFS, 562-980-4046.

SUPPLEMENTARY INFORMATION:

The Pacific Fishery Management Council (Council) developed Amendment 16 to bring the Salmon FMP into compliance with the 2007 MSA amendments and revised NSIGs (74 FR 3178, January 16, 2009). The Council took final action on Amendment 16 in June 2011 and transmitted the amendment to NMFS on September 12, 2011. NMFS published a Notice of Availability of Amendment 16 in the Federal Register (76 FR 57945, September 19, 2011) to notify the public of the availability of the amendment and invite comments. Alternatives considered in the development of Amendment 16 were analyzed in a draft Environmental Assessment (EA). NMFS published a proposed rule and notice of availability of the draft EA in the Federal Register (76 FR 65673, October 24, 2011) to notify the public and invite comments. NMFS received 10 comment submissions. The comments are summarized and responded to in the "Response to Comments" section of this rule.

Amendment 16 reorganizes and classifies stocks in the FMP, establishes new status determination criteria, establishes a framework for defining reference points related to overfishing limits (OFL), acceptable biological catch (ABC), and annual catch limits (ACLs),

and establishes appropriate accountability measures (AM) necessary to prevent the ACLs from being exceeded, and to mitigate any overages that may occur. Amendment 16 also sets a new conservation objective for Klamath River fall Chinook, and specifies de minimis fishing rate provisions to address management in years of low abundance. The details of Amendment 16 were described in the proposed rule (76 FR 65673, October 24, 2011) and are not repeated here. This final rule identifies changes to the regulations under 50 CFR 660 subpart H to implement Amendment 16 and describes changes made from the proposed rule.

Response to Comments

NMFS invited comments on Amendment 16, the related draft EA, and the proposed rule. Comments were received from 10 groups and individuals, including a letter of “no comment” submitted by U.S. Department of the Interior. Complete written comments are incorporated into Appendix J of the EA. Many comments were similar in substance, therefore, the comments are summarized and addressed below.

Comment 1: Several comments received included requests to extend the comment period for up to 60 days.

Response: NMFS determined that extension of the comment period for this action was not possible. The Council and NMFS are operating under a statutory deadline to implement an amendment to the FMP to bring it into compliance with the requirements of the MSA to implement annual catch limits and accountability measures in 2011. Additionally, under the MSA, NMFS has 95 days to approve or disapprove an FMP amendment. If NMFS did not take action within that 95-day period, the amendment would have been approved by default. The PFMC transmitted the Amendment 16 to NMFS on September 12; therefore, the 95-day period to approve or disapprove the amendment would have expired on December 16. Therefore, there

was insufficient time to allow for a meaningful extension of the comment period. In addition, Amendment 16 has been in development in an open, public process since March 2009. There have been multiple opportunities to comment at public meetings throughout this process, and an ongoing opportunity to submit written comments. The Council developed Amendment 16 at its meetings in Washington, Oregon, Idaho, and California of both the full Council and the Salmon Amendment Committee, all of which were open to the public and announced in the Federal Register. To facilitate those unable to attend Council meetings in person, the Council streams meetings live on the internet.

Comment 2: While habitat conditions in the Klamath River basin have been improving, the number of fish returning to spawn has been observed to decrease over time. For example, habitat restoration efforts have resulted in increased production of age 0+ Chinook in the Scott River. The reason for the decline in spawning adults is the decline in returning adults.

Response: Amendment 16 should result in greater spawning escapement throughout the Klamath Basin, because managing for MSY spawning escapement will result in managing for an escapement of 40,700 natural area adult spawners rather than 35,000.

Comment 3: The EA does not address all in-river tribal harvest, particularly that by the Karuk Tribe and occupants of the Resighini Reservation.

Response: The EA assesses the impacts the proposed actions on the affected environment, which includes in-river harvest by the Yurok and Hoopa Valley Tribes (sections 4.1.2.2, 4.1.5.4, and 4.4.8). Additional information was added to the final EA in section 4.1.5.4 noting the rationale for de minimis fishing at low stock size to address minimal tribal needs. Thus, the EA adequately accounts for harvest by the Yurok and Hoopa Valley tribal members.

The Karuk tribe and Resighini Rancheria do not have federally recognized fishing rights.

The Karuk tribal dipnet fisheries, and fishing conducted by members of the Resighini Rancheria, are conducted in-river under state regulations (15 CCR §7.50(b)(91.1)), and are subject to the same season and bag limit restrictions as the in-river non-Indian recreational fisheries; tribal effort is thought to be minor compared to the recreational fishery. Fish caught in these fisheries may not be sold commercially, so there are no significant economic impacts. The biological impacts are reflected in spawning escapement, which is the basis for Annual Catch Limits (ACL) and status determination criteria (SDC) which are part of the proposed action and are thoroughly analyzed in the EA. Information describing the Karuk and Resighini fisheries was added to section 3.4.6.4 of the EA.

Comment 4: The EA fails to analyze the effects of in-river fisheries, which according to one commenter will have significant environmental effects that “will result from the implementation of Amendment 16.” Such effects according to the commenters include excessive pressure on certain stocks, use of gear that is selective for larger fish, and impacts to ESA-listed coho. The draft EA fails to analyze the effects of in-river fishing on ESA-listed species. The Council and NMFS should regulate in-river fisheries. Accountability measures are not adequate because they don’t address in-river harvest.

Response: Regulation of in-river fisheries is beyond the scope of Amendment 16, and therefore the EA is not required to address the impacts of in-river fisheries as effects of Amendment 16. Neither the Council nor NMFS have statutory authority to directly regulate in-river fisheries under the Magnuson-Stevens Act, 16 USC 1800 et seq. The Council’s jurisdiction is specifically limited to the area “seaward” of the west coast states (16 USC section 1852(a)(1)(F)). NMFS’ authority to manage fisheries under the MSA is limited to the U.S. EEZ, and with respect to the proposed action is limited to approving or disapproving, and

implementing the Council's action in Amendment 16 (18 USC section 1854). As the commenters point out, federal, state, and tribal fishery managers coordinate their management of the salmon fisheries. Such coordination is necessary as salmon are impacted by fisheries under multiple management jurisdictions, and all of those impacts must be addressed to ensure that escapement goals are met and that the tribes can exercise their fishing rights. However, coordination with the entities that regulate in-river fishing does not bestow upon the Council and NMFS the statutory authority to impose regulations on that fishing. As the regulation of in-river fisheries is beyond the scope of this proposed action, and in any event is beyond the scope of the Council's and NMFS' jurisdiction under the Magnuson-Stevens Act, the extent of NMFS' authority to implement and enforce the Endangered Species Act with respect to in-river fisheries is not relevant to the scope of effects of the proposed action analyzed in the EA for Amendment 16. In-river fisheries, however, are part of the Affected Environment, and a brief description of these fisheries was added to sections 3.4.4.4, 3.4.5.4, 3.4.6.4, and 3.4.7.4 of the EA. The analysis of the effects of Amendment 16 on biological resources was based on spawning escapement relative to the SDC, and therefore accounts for all mortality sources, including in-river fisheries (Tables 4-2 and 4-5 in the EA).

Comment 5: The EA fails to include reasonable alternatives with respect to the Klamath Basin, specifically a spawning escapement target for KRFC higher than 40,700, regulating in-river harvest practices, and improving in-river accountability measures.

Response: The additional alternatives identified are beyond the scope of actions identified in the purpose and need statement. The purpose and need for Amendment 16 was to bring the Salmon FMP into compliance with the amended MSA and NS1 guidelines, particularly requirements for ACLs, accountability measures, and to ensure objective and measureable status

determination criteria, which requires management based on MSY. There were no analyses supporting spawning escapement objectives for any purpose other than consistency with MSY. As part of its issue scoping process, the Council directed that conservation objectives should be updated as part of the Amendment 16 process only as necessary to comply with the purpose and need statement. As explained in response to Comment 4, the additional alternatives related to changing in-river harvest methods, timing, and accountability measures are not within the jurisdiction of the Council and NMFS to implement. In-river harvest is regulated by the State of California and the Yurok and Hoopa Valley Tribes. The EA did contemplate and analyze effects from the amount of in-river harvest on the affected environment. Accountability measures are intended to ensure compliance with the established ACLs or to mitigate the adverse affects if there is non-compliance. Mortality from all sources, including all in-river fisheries, is accounted for in assessing compliance with ACLs because the metric is based on spawning escapement.

Comment 6: The EA does not analyze impacts to Klamath sub-basin Chinook populations. The EA should address the disproportionate impact of fishery management on early spawners and propose approaches to quantify and minimize such impacts.

Response: The effects of implementing Amendment 16 on sub-basin populations within the Klamath Basin are acknowledged and assessed by incorporating the analysis from Salmon FMP Amendment 15 into Amendment 16 (section 4.1.5.4). There is insufficient information to analyze the effects of Amendment 16 on Klamath sub-basin populations beyond what is contained in the Amendment 15 analysis; to the extent there are “disproportionate effects” these cannot be quantified.

The focus of the comments seems to be on the adequacy of 40,700 spawners as a management objective, and how that number was derived. The value of the MSY spawning

escapement that is included in Amendment 16 (40,700 natural area adult spawners) is based on what is currently the best available science. The MSA requires that management decisions be based on the best available science. The FMP as amended by Amendment 16 provides a process for changing estimates of MSY if additional information suggests a better estimate is available, or sub-basin specific management objectives could be adopted; however, there is not sufficient information available on which to base such changes at this time.

Comment 7: An escapement objective of 40,700 KRFC spawners is an improvement, but inadequate. Shasta River Basin needs at least 10,000 spawners, and is unlikely to achieve that with an escapement of 40,700 for the entire Klamath-Trinity system. The 40,700 escapement goal does not allow for reaching historical Chinook numbers in the Shasta River.

Response: NMFS and the Council are unaware of any information supporting an objective of 10,000 spawners for the Shasta River. There is no identified objective for the Shasta River in the Salmon FMP, and there is insufficient information on which to base management of the fisheries to achieve an annual Shasta River-specific spawning escapement goal. Therefore, the Council manages Klamath Basin on an aggregate basis using the best available science. The currently available habitat is not capable of supporting historic fish abundance due to dam construction and habitat degradation throughout the Klamath-Trinity Basin. As evidence, relatively large spawning escapements in recent years have not resulted in larger than average subsequent broods (Klamath River fall Chinook stock-recruitment analysis, STT 2005). The best available science indicates that 40,700 is an appropriate spawning escapement.

Comment 8: The KRFC escapement objectives considered in the EA do not provide enough fish returning to allow those involved in habitat restoration efforts to see improvement in fish abundance.

Response: The comment suggests that the escapement objective be set to provide an adequate number of returning fish to demonstrate progress resulting from habitat improvement efforts in the Klamath. The criterion is subjective and it is not clear how it could be implemented. Text was added to the EA to note that a larger escapement goal could generally correlate to increased visibility of returning spawners in the Klamath Basin, and that there is likely a relationship between participation in habitat restoration efforts and returning adults, as well as between other aesthetic uses and returning adults (section 4.5.7).

Comment 9: MSY for KRFC is based on recruitment as if all variability were a result of only inland conditions.

Response: The MSY spawning escapement objective is based on both spawner/recruit relationship and an early life history survival term that accounts for both river out-migrant and early ocean entry survival; therefore, the estimate of MSY does not assume survival variability is only the result of inland conditions (Klamath River fall Chinook stock-recruitment analysis, STT 2005).

Comment 10: Including first generation hatchery strays (e.g., Iron Gate Hatchery fish spawning in Bogus Creek and Trinity River Hatchery fish spawning downstream of the hatchery) in any estimate of “natural spawners” effectively props up natural spawning escapement estimates. First generation hatchery fish spawning naturally should be excluded from reported values for natural spawning escapement.

Response: The spawner escapement portion of the KRFC conservation objective is, and has been, specified in terms of natural-area adults and not natural-origin adults. The spawner/recruit relationship used to specify MSY spawning escapement for KRFC is based on the best available science, and provides a statistically significant, scientifically defensible

estimate of MSY spawning escapement.

Comment 11: The EA does not analyze effects on marine nutrient cycle.

Response: The marine nutrient cycle is identified as part of the affected environment (section 3.3) and assessed qualitatively in the EA (section 4.3.1).

Comment 12: The draft EA's reliance on previous environmental review documents is inappropriate. Circumstances have changed, specifically regarding the effects of in-river fisheries and habitat improvements in the Klamath Basin.

Response: Use of previous environmental documents is appropriate as long as they are properly incorporated by reference and up to date information is included in the EA or in the referenced documents. The documents referenced in Amendment 16 are all less than 10 years old, and many are updated annually, including the stock assessment and fishery evaluation, which assesses management effectiveness annually. The stock/recruitment analysis for KRFC (Klamath River fall Chinook stock-recruitment analysis, STT 2005) used more recent data than 2000 to derive the 40,700 MSY spawning escapement estimate. The analysis was completed in 2005 and used data through 2004; the 2000 brood was the last complete brood available for that analysis. STT (2005) and the Amendment 15 EA (PFMC and NMFS 2007) were added to the list of documents incorporated by reference and text was added to the final Amendment 16 EA clarifying that the documents referenced in Section 1.4.2 were incorporated by reference.

The FMP describes a process for incorporating new scientific information and methodologies into the annual salmon management process, and Amendment 16 provides for reference points, including S_{MSY} , to be changed in response to new information. Thus, if scientific information becomes available that warrants a reconsideration of reference points specific to the Klamath, this can serve as a basis for reevaluation of those reference points.

Comment 13: Maximum sustainable yield is not adequate to achieve optimum yield, which should take into consideration the need for those living inland in the Klamath Basin to see spawner returns that reflect recovery efforts.

Response: The scope of Amendment 16 did not include revising the current definition of achieving OY for salmon; therefore, considering alternatives for OY was not appropriate as part of this action. The FMP currently defines OY on a coast-wide stock and fishery aggregate basis. Changing the conservation objective of one stock to address OY would not be appropriate given the current definition of OY.

Comment 14: The EA does not analyze the impacts of fishing, particularly in-river fishing practices, on ESA-listed species.

Response: The EA considers the effects of the proposed action on listed species. As stated in the EA (section 3.2), the effects of alternatives on ESA-listed salmon are assessed along with target salmon stocks (section 4.1). To address impacts on ESA-listed species, NMFS undertakes ESA Section 7 consultations. NMFS has issued several biological opinions on the FMP covering salmonid and non-salmonid species that are affected by the ocean salmon fisheries and fisheries are managed to meet standards set forth in those opinions. The proposed action would not change this aspect of the salmon FMP. As discussed in response to Comment 4, regulation of in-river fishing is beyond the scope of Amendment 16, therefore the effects of in-river fishing on ESA-listed species are not effects of this action.

Comment 15: Objection to setting the lower end of the current conservation objective for SRFC (i.e., 122,000) as S_{MSY} , this effectively changes the conservation objective from a range of 122,000 to 180,000 to a single value of 122,000.

Response: The form of the harvest control rule adopted requires a single value of S_{MSY}

upon which to calculate annual management measures, so a single value was adopted based on the 1984 framework amendment. There was no supporting analysis to suggest that a different value was appropriate, and such an analysis was beyond the scope of Amendment 16. The conservation objective as stated in the FMP (Appendix I of the EA) was unchanged at 122,000-180,000 adult spawners and is not changed by the definition of S_{MSY} , which is used to determine the point at which SRFC are overfished, rebuilt, and when de minimis fishing provisions apply. Defining S_{MSY} does not remove the Council and NMFS' ability to structure management measures to target higher escapement levels in response to year-specific conditions. A list of considerations for implementing de minimis fisheries is included in the FMP language (Appendix I) and has been added to the EA (section 2.5.1.6) and the regulatory text at §660.410 (b).

Comment 16: Managing to the low end of the SRFC conservation objective is not appropriate given that the low end was established due to migratory restrictions imposed by Red Bluff Diversion Dam. The reasonable and prudent alternative in NMFS' 2009 Biological Opinion for the Central Valley Project would require that gates be raised year-round on the dam in order to improve passage. As a consequence, NMFS should set S_{MSY} at 180,000 adult spawners.

Response: There was no scientific support for choosing 180,000 as S_{MSY} . The S_{MSY} value used in the EA is based on the best available science. Amendment 16 provides a mechanism for updating reference points based on new scientific information, when that becomes available.

Comment 17: Even the high end of the SRFC conservation objective range (180,000) may not be appropriate under the "doubling goal" of the Central Valley Project Improvement act

(CVPIA).

Response: As noted in response to the previous comments, the S_{MSY} value used in the EA is based on the best available scientific information. The conservation objective for SRFC is not changed by this action. The “doubling goal” of the CVPIA does not create any specific standards that make a revision to the conservation objective for SRFC necessary or appropriate.

The purpose and need for Amendment 16 was to bring the Salmon FMP into compliance with the MSA, which requires management based on MSY. There is no analysis supporting any specific spawning escapement objective for any purpose other than MSY. Also as noted in response to Comment 16, setting a specific value for S_{MSY} does not remove the Council’s ability to structure fisheries to achieve the conservation objective for SRFC.

Comment 18: De minimis fishing provisions could be counterproductive to the "doubling goal" of the CVPIA.

Response: All of the de minimis fishing alternatives are based on management for MSY. Managing for MSY will result in optimal production that the habitat can support. Estimates of MSY are based on long-term average escapement, and some years with escapement below S_{MSY} are expected. The low exploitation rates allowed under the de minimis fishing provisions will not significantly affect achievement of MSY in the long-term, as they are expected to occur infrequently. In applying the de minimis control rules, the Council and NMFS must consider a number of factors related to the continued productivity of the stock, and de minimis exploitation rates must not jeopardize the long term capacity of the stock to produce MSY on a continuing basis. As habitat is improved, estimates of MSY should be reviewed and revised if appropriate to account for the increased capacity of spawning habitat.

Comment 19: Relying on abundance of hatchery stocks to support de minimis fisheries is

potentially harmful to genetic and phenotypic diversity in Central Valley Chinook. Statement in EA that egg transfers between hatcheries is viable mitigation for low spawner abundance is flawed.

Response: Hatchery policy is set by CDFG and USFWS, and is therefore outside the scope of Amendment 16. Conservation objectives for hatchery stocks are set by those entities and annual salmon management measures are crafted to meet them. Amendment 16 retains the provision to allow conservation objectives for hatchery stocks to be modified as hatchery policies change.

Comment 20: Contrary to analysis in the EA, San Joaquin River fall-run Chinook could suffer significant impacts under de minimis fishing provisions.

Response: Exploitation rates under de minimis fishing conditions are, by definition, intended to avoid significant impacts. San Joaquin fall Chinook are expected to experience the same ocean exploitation rates, and the same or lower freshwater exploitation rates, as SRFC; therefore the EA correctly assessed the risk to San Joaquin fall Chinook. In addition, the alternatives for de minimis fisheries include consideration of the list of factors currently in the de minimis provision for Klamath River Fall Chinook, adopted as part of Amendment 15. These include the status of sub-stocks and the status of co-mingled stocks. A list of considerations for implementing de minimis fisheries is included in the FMP language (Appendix I) and has been added to the EA (section 2.5.1.6) and the regulatory text at §660.410 (b).

Comment 21: The draft EA does not "discuss the interplay between ocean harvest and freshwater management" and should do so.

Response: The interaction of ocean and inside fisheries is described in the annual Review of Ocean Fisheries document (PFMC 2011a), which was referenced in the description of

the affected environment and incorporated by reference. Language was added to the EA to emphasize the incorporation by reference (section 1.4.2). The analysis of alternatives in Amendment 16 included effects of inside fisheries on spawning escapement, and described the relationship between escapement from ocean fisheries and allowable harvest of tribal and recreational river fisheries in the Klamath Basin.

Text has been added to the EA to note that a larger escapement goal could generally correlate to increased visibility of returning spawners, and that there is likely a relationship between participation in habitat restoration efforts and returning adults, as well as between other aesthetic uses and returning adults (section 4.5.7).

Comment 22: “Producers” (communities and entities where salmon spawn and rear and are produced) should be included in harvest management and should have positions on the PFMC and Klamath Fishery Management Council (KFMC).

Response: The Klamath Act, which established the KFMC, expired on October 1, 2006, and was not reauthorized by Congress. Funding for this program was eliminated and the charter for the KFMC was discontinued. The non-agency PFMC members are nominated by governors of the four states and appointed by the Secretary of Commerce. Most appointed positions are held by representatives of fishery sectors, but that is not a requirement and the PFMC has appointed members that are not associated with commercial, recreational, or tribal fishery sectors. People interested in appointments need to contact the office of their state Governor (for additional information see 50 CFR 600.215). The Council also has advisory bodies with positions reserved for general public and environmental groups. These advisory bodies include the Salmon Advisory Subpanel and the Habitat Committee, and other ad hoc committees. People interested in appointments to advisory bodies need to follow PFMC procedures for nomination

(<http://www.pcouncil.org/council-operations/council-and-committees/current-vacancies/>).

Comment 23: The EA fails to incorporate adaptive management – KRFC escapement should be reviewed and updated.

Response: Adaptive management is inherent in all fishery management plans and the MSA process, as informed by new information and science. Escapement of all managed salmon stocks is reviewed and updated annually in the Review of Ocean Fisheries (SAFE) document (e.g., PFMC 2011a). In addition, a process for review and updating of stock specific conservation objectives is provided in Amendment 16 and the Salmon FMP. As part of its issue scoping process, the Council directed that conservation objectives should be updated as part of the Amendment 16 process only as necessary to comply with the purpose and need statement. However, the Council noted that development and review of conservation objectives for stocks should be pursued through the Salmon Methodology Review process on a priority basis as adequate information becomes available.

Comment 24: The Yurok and Hoopa Valley tribes submitted comments focused primarily on Klamath River fall Chinook. The tribes generally supported Amendment 16 including most aspects of the control rule and the proposal to increase the S_{MSY} based conservation objective to 40,700. However, both tribes expressed concern that the control rule for Klamath River fall Chinook and the resulting allowance for non-zero de minimis exploitation rates at low abundance levels could adversely affect sub-stocks. The tribes' comments refer to the analysis done in conjunction with Amendment 15 that highlighted the increased risk to sub-stocks as abundance falls below approximately 20,000 adult spawners. Both tribes support use of the control rule in most part, but requested that de minimis fishing be reduced to zero when abundance is less than $\frac{1}{2} S_{MSY}$ or 20,350 (Yurok Tribe) or 22,000 (Hoopa Valley Tribe). As an

alternative, the Yurok Tribe requested that the final rule be modified to include qualitative considerations similar to those used in Amendment 15 indicating that there would be little or no harvest opportunity when abundance is projected to be below $\frac{1}{2} S_{MSY}$.

Response: The effects of implementing Amendment 16 on sub-basin populations within the Klamath Basin, including the de minimis fishing provisions, are acknowledged and considered in the EA by incorporating the analysis from Salmon FMP Amendment 15 into Amendment 16. The control rule proposed in Amendment 16 is more prescriptive than that contained in Amendment 15. Unlike Amendment 15 the control rule defines maximum allowable exploitation rates at all abundance levels. The de minimis provisions were designed, in part, to account for impacts in fall season fisheries that sometimes occur before the status of the returning brood is known. In addition, the control rule lists several qualitative considerations that the Council must consider when recommending de minimis exploitation rates in a given year. The first of these considerations relates to genetic concerns and the effect to sub-stocks at low abundance. Another consideration, and one reason for providing qualitative considerations for some limited harvest at low abundance, relates to a recognition of the minimal needs for tribal fisheries. NMFS believes that the effect of these considerations are largely coincident with the views expressed by the tribes and that in fact there would be little or no opportunity for harvest at abundance levels that are on the order of 20,000 fish or less. It is worth noting that there has never been a forecast of abundance as low as 22,000. Nonetheless, NMFS has added language to the final rule in response to the tribes' request to emphasize this expectation.

The Council considered alternative versions of the control rule that would have reduced de minimis fishing to zero at various levels of abundance. However, the Council ultimately recommended an alternative that allowed for consideration of some limited, non-zero harvest at

low abundance coupled with the qualitative considerations that would be used for making the necessary recommendations. NMFS' decision here is whether or not to approve Amendment 16, including the de minimis fishing provisions, based on assessment of whether the amendment is consistent with the MSA and other applicable law. NMFS cannot, in this action, modify the Amendment. NMFS believes that the control rule recommended for Klamath River fall Chinook through Amendment 16, including the de minimis fishing provisions, are consistent with the requirements of the MSA, including the requirement to maintain the capacity of the stock to produce MSY on a continuing basis, and other applicable laws. As noted above, NMFS has modified the regulatory text in this final rule to emphasize our expectation that there will be little or no harvest when abundance is very low. The distinction between the zero levels of fishing that the tribes request under rare circumstances, and the single digit exploitation rates that might be allowed under Amendment 16 is inconsequential from a biological perspective and does not affect the general conclusion regarding the capacity of the stock to produce MSY on a continuing basis.

Changes from Proposed Rule

This final rule includes changes to the existing regulations at 50 CFR 660.401 et seq. to implement Amendment 16 and additional updates. These are largely unchanged from the proposed rule; those that have changed from the proposed rule are described below.

- § 660.408 – Annual actions

Language reinforcing that ACLs are not to be exceeded even when de minimis control rules apply has been added.

- § 660.410 – Conservation objectives, ACLs, and de minimis control rules

Section title is changed and language added to include additional considerations for

implementation of de minimis control rules and to clarify the relationship between de minimis control rules, ACLs and conservation objectives.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this final rule is consistent with Amendment 16, other provisions of the Magnuson-Stevens Act, and other applicable law.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

An EA has been prepared for Amendment 16; a copy of the EA is available online at <http://www.pcouncil.org/>. The EA includes a regulatory impact review.

NMFS prepared a Final Regulatory Flexibility Analysis (FRFA) for this action to assess its impact on small entities. The FRFA incorporates the initial regulatory flexibility analysis (IRFA) prepared for the draft EA, summarizes the significant issues raised by the public comments in response to the IRFA, responds to those comments, and summarizes of the analyses completed to support the action. A copy of the FRFA is available from NMFS (see ADDRESSES) and a summary of the FRFA, per the requirements of 5 U.S.C. 604(a), follows.

Amendment 16 to the Salmon FMP establishes conservation and allocation guidelines for annual management of salmon off the coasts of Washington, Oregon, and California. This framework allows the Council to develop measures responsive to stock status in a given year. Section 3 of the Salmon FMP describes the conservation objectives for Salmon FMP stocks necessary to meet the dual MSA objectives of obtaining optimum yield (OY) from a fishery while preventing overfishing. Each stock has a specific objective, generally designed to achieve MSY, maximum sustained production (MSP), or in some cases, an exploitation rate to serve as

an MSY proxy.

The Salmon FMP under Amendment 16 also specifies criteria to determine when overfishing may be occurring and when a stock may have become overfished. The Salmon FMP also specifies required actions when these conditions are triggered. Amendment 16 will bring the Salmon FMP into compliance with the MSA, as amended in 2007, and the revised NS1Gs, by developing and implementing ACLs and AMs to prevent overfishing on stocks in the fishery to which MSA section 303(a)(15) applies, ensure “measurable and objective” SDC for stocks in the fishery, and define the control rules under which de minimis fishing opportunity would take place consistent with NS1.

The Pacific Fishery Management Council’s “Review 2010 Ocean Salmon Fisheries” provides the following economic snapshot of the 2010 fishery. Total 2010 ex-vessel value of the Council-managed non-Indian commercial salmon fishery was \$7.15 million, which is the fifth lowest on record, but more than four times above its 2009 level of \$1.5 million. California had its first commercial salmon fishery since 2007. The 2010 ex-vessel value of the commercial fishery was 28 percent below the 2005-2009 inflation-adjusted average of \$10 million and 88 percent below the 1979 through 1990 inflation-adjusted average of \$59.3 million. Based on Pacific Coast Fisheries Information Network (PacFIN) data, a total of 641 vessels participated in the non-tribal West Coast commercial salmon fishery in 2010. This is more than double the number that participated in 2009 (313), and nearly triple the number in 2008. However the 2010 total was down 36 percent from 2007’s total of 1,007 vessels.

The preliminary number of vessel-based ocean salmon recreational angler trips taken on the West Coast in 2010 was 182,900, a decrease of three percent from 2009, and 70 percent below the 1979 through 1990 average. Compared with 2009, preliminary estimates of the

number of trips taken in 2010 decreased by 37 percent in Oregon and 18 percent in Washington. California effort was up substantially since the sport fishery was not restricted to a 10-day fishery in the Klamath Management Zone as it was in 2009; however it was still severely depressed compared to historic levels. Recreational salmon fishing takes place primarily in two modes, (1) anglers fishing from privately owned pleasure crafts, and (2) anglers employing the services of the charter boat fleet. In general, success rates on charter vessels tend to be higher than success rates on private vessels. Small amounts of shore-based effort directed toward ocean area salmon occur, primarily from jetties and piers. Coastwide, the proportion of angler trips taken on charter vessels in 2010 was relatively stable at 24 percent compared with 23 percent in 2009; however, underlying this trend was a decline in the proportion of charter trips in Oregon and increases in California and Washington. During 2010, the Review indicates that there were 465 charterboats that participated in the 2010 fishery.

While some of the treaty Indian harvest was for ceremonial and subsistence purposes, the vast majority of the catch was commercial harvest. For all of 2010 the preliminary ex-vessel value of Chinook and coho landed in the treaty Indian ocean troll fishery was \$1.8 million, compared with the ex-vessel value in 2009 of \$1.0 million. According to a Northwest Indian Fisheries Commission representative, the tribal fleet consists of 40 to 50 trollers. The commercial entities directly regulated by the Pacific Council's Fishery Management Plan are non-tribal commercial trollers, tribal commercial trollers, and charterboats. During 2010, these fleets consisted of 641 non-tribal trollers, 40 to 50 tribal trollers, and 465 charterboats.

Total West Coast income impact associated with recreational and commercial ocean salmon fisheries for all three states combined was estimated at \$25.5 million in 2010. This was 46 percent above the estimated 2009 level of \$17.4 million. 2010 had the third lowest income

impacts on record, with 2008 having the lowest on record at \$7.5 million and 2009 the second lowest (adjusted for inflation).

The key components of Amendment 16 are administrative; as they are revisions to the key components of the process by which the Council and NMFS make decisions on how best to manage various stocks in the fishery. These key components include defining what stocks are in the fishery; how these stocks may be organized into stock complexes, the treatment of international stocks, revising the stock status determination criteria including definitions of overfishing, ABC, and ACL reference points; and revising de minimis fishing provisions to allow for more flexibility in setting annual regulations when the conservation objectives for limiting stocks are projected not to be met, and provide opportunity to access more abundant salmon stocks that are typically available in the Council management area when the status of one stock may otherwise preclude all ocean salmon fishing in a large region. This action revises the process of how conservation and management decisions will be made; it contains no actual application of the methods to set ABC, ACL, or OFL or the management measures (e.g. closed seasons, area closures, bag limits, etc.) to keep the fishery within the ACL and other conservation objectives to assure that overfishing does not occur. As a result there are no immediate economic impacts to evaluate. These will occur when the new process is actually applied in future actions and the economic impacts will be evaluated then.

However, the EA did undertake an economic analysis of the expected effects of the preferred action and options relative to “No Action” alternative and presented the following conclusions. The proposed alternatives for classifying the stocks in the FMP will have no economic impacts, as there are no biological implications to designating stocks “in the fishery” and “ecosystem components,” as compared with the no action Alternative. Proposed alternatives

for SDC have no significant biological or economic impacts. The stocks have had low frequency of experiencing overfishing in the past, and many of the current control rules clearly prevent fishing at or above F_{MSY} . It has been rare that stock abundance or other constraints on the fishery have created opportunity for fishing above F_{MSY} in other cases. Identifying clearer criteria with which to determine stock status will more clearly align with the MSA and NS1Gs, and can help managers implement timelier management responses and contribute to ensuring sustainable salmon stock levels to support the fishery, resulting in positive economic effects. The proposed alternatives for implementing ACLs, ABCs, and associated reference points (i.e., the ACL framework) are similar in nature to the effects of the proposed SDC. Thus, they have no significant biological or economic impacts. In the short term, fisheries may be constrained in a given year to prevent overfishing, but such actions will provide long-term benefits from more sustainable salmon populations to support harvest and recreational opportunities.

Proposed alternatives to identify AMs have no significant biological or economic impacts, compared to the no action alternative. Many of the proposed AMs identified are actions that exist in the FMP currently and are administrative in nature (e.g., notification). Proposed alternatives for de minimis fishing are not expected to result in significant biological or economic effects. However, providing for de minimis fishing will afford more opportunities for harvest, consistent with National Standard 8, and achieve optimum yield for the fishery consistent with NS1. Therefore, there are projected positive economic benefits of the proposed action by allowing some minimal harvest of weaker stocks in an effort to harvest healthier, abundant stocks in the mixed stock fishery.

The commercial entities directly regulated by the Pacific Council's Fishery Salmon Management Plan are non-tribal commercial trollers, tribal commercial trollers, and charterboats.

During 2010, these fleets consisted of 641 non-tribal trollers, 40 to 50 tribal trollers, and 465 charterboats. A fish-harvesting business is considered a “small” business by the Small Business Administration (SBA) if it has annual receipts not in excess of \$4.0 million. For marinas and charter/party boats, a small business is one with annual receipts not in excess of \$6.5 million. All of the businesses that would be affected by this action are considered small businesses under SBA guidance. Tribal and non-tribal commercial salmon vessel revenues averaged approximately \$13,000 in 2010 (Review of 2010 Ocean Salmon Fisheries). Charterboats participating in the recreational salmon fishery in 2000 had average revenues ranging from \$7,000 to \$131,000, depending on vessel size class (Pacific States Marine Fisheries Commission study). These figures remain low, and NMFS has no information suggesting that these vessels have received annual revenues since 2000 such that they should be considered “large” entities under the RFA. As these average revenues are far below SBA’s thresholds for a small entities, NMFS has determined that all of these entities are small entities under SBA’s definitions.

The economic analysis does not highlight any significant impact upon small businesses. The key components of Amendment 16 are administrative; as they are revisions to the key components of the process by which the Council and NMFS make decisions on how best to manage various stocks in the fishery. As a result there are no immediate economic impacts to evaluate. These will occur when the new process is actually applied in future actions, and the economic impacts will be evaluated then. Consequently, the regulations are not expected to meet any of the tests of having a "significant" economic impact on a "substantial number" of small entities. The comments that NMFS received on this final rule are discussed above. None of these comments addressed the IRFA. There are no additional projected reporting, record-keeping, and other compliance requirements of this final rule not already envisioned within the

scope of current requirements. References to collections-of-information made in this action are intended to properly cite those collections in Federal regulations, and not to alter their effect in any way. No Federal rules have been identified that duplicate, overlap, or conflict with this action.

NMFS has issued ESA biological opinions that address the impacts of the Council managed salmon fisheries on listed salmonids as follows: March 8, 1996 (Snake River spring/summer and fall Chinook and sockeye), April 28, 1999 (Oregon Coast natural coho, Southern Oregon/Northern California coastal coho, Central California coastal coho), April 28, 2000 (Central Valley spring Chinook), April 27, 2001 (Hood Canal summer chum 4(d) limit), April 30, 2004 (Puget Sound Chinook), June 13, 2005 (California coastal Chinook), April 28, 2008 (Lower Columbia River natural coho), and April 30, 2010 (Sacramento River winter Chinook, Lower Columbia River Chinook; and listed Puget Sound yelloweye rockfish, canary rockfish, and bocaccio). NMFS reiterates its consultation standards for all ESA-listed salmon and steelhead species in their annual Guidance letter to the Council. In 2009, NMFS consulted on the effects of fishing under the Salmon FMP on the endangered Southern Resident Killer Whale Distinct Population Segment (SRKW) and concluded the salmon fisheries were not likely to jeopardize SRKW (biological opinion dated May 5, 2009). NMFS previously concluded that Pacific Coast salmon fisheries would have no effect on ESA-listed North American green sturgeon (biological opinion dated April 30, 2007) or Pacific eulachon (biological opinion dated April 30, 2010). These biological opinions are available online (<http://www.nwr.noaa.gov/Salmon-Habitat/ESA-Consultations/Biological-Opinions.cfm>).

Pursuant to Executive Order 13175, this proposed rule was developed after meaningful consultation and collaboration with Tribal officials from the area covered by the FMP. Under

the Magnuson-Stevens Act at 16 U.S.C. 1852(b)(5), one of the voting members of the Pacific Council must be a representative of an Indian Tribe with Federally recognized fishing rights from the area of the Council's jurisdiction. In addition, a Tribal representative served on the committee appointed by the Pacific Council to develop Amendment 16.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, Recordkeeping and reporting requirements

Dated: December 22, 2011.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 660 is amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES

1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 et seq. and 16 U.S.C. 773 et seq.

2. In § 660.402, revise the definition for “Pacific Coast Salmon Plan” to read as follows:

§ 660.402 Definitions.

* * * * *

Pacific Coast Salmon Plan (PCSP or Salmon FMP) means the Fishery Management Plan,

as amended, for commercial and recreational ocean salmon fisheries in the Exclusive Economic Zone (EEZ) (3 to 200 nautical miles offshore) off Washington, Oregon, and California. The Salmon FMP was first developed by the Council and approved by the Secretary in 1978. The Salmon FMP was amended on October 31, 1984, to establish a framework process to develop and implement fishery management actions; the Salmon FMP has been subsequently amended at irregular intervals. Other names commonly used include: Pacific Coast Salmon Fishery Management Plan, West Coast Salmon Plan, West Coast Salmon Fishery Management Plan.

* * * * *

3. In § 660.403, revise paragraph (b) to read as follows:

§ 660.403 Relation to other laws.

* * * * *

(b) Any person fishing subject to this subpart who also engages in fishing for groundfish should consult Federal regulations in subpart C through G for applicable requirements of that subpart, including the requirement that vessels engaged in commercial fishing for groundfish (except commercial passenger vessels) have vessel identification in accordance with § 660.20.

* * * * *

4. In § 660.405, revise paragraphs (b) and (c) to read as follows:

§ 660.405 Prohibitions.

* * * * *

(b) The fishery management area is closed to salmon fishing except as opened by this subpart or superseding regulations or notices. All open fishing periods begin at 0001 hours and end at 2400 hours local time on the dates specified, except that a fishing period may be ended prior to 2400 hours local time through an inseason action taken under § 660.409 in order to meet

fishery management objectives.

(c) Under the Pacific Coast groundfish regulations at § 660.330, fishing with salmon troll gear is prohibited within the Salmon Troll Yelloweye Rockfish Conservation Area (YRCA). It is unlawful for commercial salmon troll vessels to take and retain, possess, or land fish taken with salmon troll gear within the Salmon Troll YRCA. Vessels may transit through the Salmon Troll YRCA with or without fish on board. The Salmon Troll YRCA is an area off the northern Washington coast. The Salmon Troll YRCA is intended to protect yelloweye rockfish. The Salmon Troll YRCA is defined by straight lines connecting specific latitude and longitude coordinates under the Pacific Coast Groundfish regulations at § 660.70.

* * * * *

5. In § 660.408,

- a. Revise paragraph (a);
- b. Redesignate paragraphs (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), (m), and (n) as paragraphs (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), (m), (n), and (o), respectively;
- c. Add a new paragraph (b);
- d. Revise newly redesignated paragraphs (c), (d)(1)(ii), (d)(1)(v)(B), (d)(1)(vi), (d)(2)(iv), (e), (g), (i)(2), (k), (l)(2), (l)(4), and (o) to read as follows:

§ 660.408 Annual actions.

(a) General. NMFS will annually establish specifications and management measures or, as necessary, adjust specifications and management measures for the commercial, recreational, and treaty Indian fisheries by publishing the action in the Federal Register under § 660.411. Management of the Pacific Coast salmon fishery will be conducted consistent with the standards and procedures in the Salmon FMP. The Salmon FMP is available from the Regional

Administrator or the Council. Specifications and management measures are described in paragraphs (b) through (o) of this section.

(b) Annual catch limits. Annual Specifications will include annual catch limits (ACLs) determined consistent with the standards and procedures in the Salmon FMP.

(c) Allowable ocean harvest levels. Allowable ocean harvest levels must ensure that conservation objectives and ACLs are met, as described in § 660.410, except that where the de minimis fishing control rules described in § 660.410(c) apply, conservation objectives may not be met, provided ACLs are met. The allowable ocean harvest for commercial, recreational, and treaty Indian fishing may be expressed in terms of season regulations expected to achieve a certain optimum harvest level or in terms of a particular number of fish. Procedures for determining allowable ocean harvest vary by species and fishery complexity, and are documented in the fishery management plan and Council documents.

(d) * * *

(1) * * *

(ii) Deviations from allocation schedule. The initial allocation may be modified annually in accordance with paragraphs (d)(1)(iii) through (viii) of this section. These deviations from the allocation schedule provide flexibility to account for the dynamic nature of the fisheries and better achieve the allocation objectives and fishery allocation priorities in paragraphs (d)(1)(ix) and (x) of this section. Total allowable ocean harvest will be maximized to the extent possible consistent with treaty obligations, state fishery needs, conservation objectives, and ACLs. Every effort will be made to establish seasons and gear requirements that provide troll and recreational fleets a reasonable opportunity to catch the available harvest. These may include single-species directed fisheries with landing restrictions for other species.

* * * * *

(v) * * *

(B) Chinook distribution. Subarea distributions of Chinook will be managed as guidelines based on calculations of the Salmon Technical Team with the primary objective of achieving all-species fisheries without imposing Chinook restrictions (i.e., area closures or bag limit reductions). Chinook in excess of all-species fisheries needs may be utilized by directed Chinook fisheries north of Cape Falcon or by negotiating a preseason species trade of Chinook and coho between commercial and recreational allocations in accordance with paragraph (d)(1)(iii) of this section.

* * * * *

(vi) Inseason trades and transfers. Inseason transfers, including species trades of Chinook and coho, may be permitted in either direction between commercial and recreational fishery quotas to allow for uncatchable fish in one fishery to be reallocated to the other. Fish will be deemed uncatchable by a respective commercial or recreational fishery only after considering all possible annual management actions to allow for their harvest that are consistent with the harvest management objectives specific in the fishery management plan including consideration of single species fisheries. Implementation of inseason transfers will require consultation with the pertinent commercial and recreational Salmon Advisory Subpanel representatives from the area involved and the Salmon Technical Team, and a clear establishment of available fish and impacts from the transfer. Inseason trades or transfers may vary from the guideline ratio of four coho to one Chinook to meet the allocation objectives in paragraph (d)(1)(ix) of this section.

* * * * *

(2) * * *

(iv) Oregon coastal natural coho. The allocation provisions in paragraph (d)(2) of this section provide guidance only when coho abundance permits a directed coho harvest, not when the allowable harvest impacts are insufficient to allow coho retention south of Cape Falcon. At such low levels, allowable harvest impacts will be allocated during the Council's preseason process.

* * * * *

(e) Management boundaries and zones. Management boundaries and zones will be established or adjusted to achieve a conservation purpose or management objective. A conservation purpose or management objective protects a fish stock, simplifies management of a fishery, or promotes wise use of fishery resources by, for example, separating fish stocks, facilitating enforcement, separating conflicting fishing activities, or facilitating harvest opportunities. Management boundaries and zones will be described by geographical references, coordinates (latitude and longitude), depth contours, distance from shore, or similar criteria.

* * * * *

(g) Recreational daily bag limits. Recreational daily bag limits for each fishing area will specify number and species of salmon that may be retained. The recreational daily bag limits for each fishing area will be set to maximize the length of the fishing season consistent with the allowable level of harvest in the area.

* * * * *

(i) * * *

(2) Commercial seasons. Commercial seasons will be established or modified taking into account wastage of fish that cannot legally be retained, size and poundage of fish caught, effort shifts between fishing areas, and protection of depressed stocks present in the fishing areas. All-

species seasons will be established to allow the maximum allowable harvest of pink salmon, when and where available, without exceeding allowable Chinook or coho harvest levels and within conservation and allocation constraints of the pink stocks.

* * * * *

(k) Selective fisheries – (1) In general. In addition to the all-species seasons and the all-species-except-coho seasons established for the commercial and recreational fisheries, species selective fisheries and mark selective fisheries may be established.

(2) Species selective fisheries. Selective coho-only, Chinook-only, pink-only, all salmon except Chinook, and all salmon except coho fisheries may be established if harvestable fish of the target species are available; harvest of incidental species will not exceed allowable levels; proven, documented selective gear exists; significant wastage of incidental species will not occur; and the selective fishery will occur in an acceptable time and area where wastage can be minimized and target stocks are primarily available.

(3) Mark selective fisheries. Fisheries that select for salmon marked with a healed adipose fin clip may be established in the annual management measures as long as they are consistent with guidelines in section 6.5.3.1 of the Pacific Coast Salmon Plan.

(1) * * *

(2) The combined treaty Indian fishing seasons will not be longer than necessary to harvest the allowable treaty Indian catch, which is the total treaty harvest that would occur if the tribes chose to take their total entitlement of the weakest stock in the fishery management area, assuming this level of harvest did not create conservation or allocation problems for other stocks.

* * * * *

(4) If adjustable quotas are established for treaty Indian fishing, they may be subject to

inseason adjustment because of unanticipated Chinook or coho hooking mortality occurring during the season, catches in treaty Indian fisheries inconsistent with those unanticipated under Federal regulations, or a need to redistribute quotas to ensure attainment of an overall quota.

* * * * *

(o) Reporting requirements. Reporting requirements for commercial fishing may be imposed to ensure timely and accurate assessment of catches in regulatory areas subject to quota management. Such reports are subject to the limitations described herein. Persons engaged in commercial fishing in a regulatory area subject to quota management and landing their catch in another regulatory area open to fishing may be required to transmit a brief report prior to leaving the first regulatory area. The regulatory areas subject to these reporting requirements, the contents of the reports, and the entities receiving the reports will be specified annually.

6. In § 660.409, revise paragraph (b)(2) introductory text to read as follows:

§ 660.409 Inseason actions.

* * * * *

(b) * * *

(2) Fishery managers must determine that any inseason adjustment in management measures is consistent with fishery regimes established by the U.S.-Canada Pacific Salmon Commission, conservation objectives and ACLs, conservation of the salmon resource, any adjudicated Indian fishing rights, and the ocean allocation scheme in the fishery management plan. All inseason adjustments will be based on consideration of the following factors:

* * * * *

7. Revise § 660.410 to read as follows:

§ 660.410 Conservation objectives, ACLs, and de minimis control rules.

(a) Conservation objectives. Annual management measures will be consistent with conservation objectives described in Table 3-1 of the Salmon FMP or as modified through the processes described below, except where the ACL escapement level for a stock is higher than the conservation objective, in which case annual management measures will be designed to ensure that the ACL for that stock is met, or where the de minimis control rules described in paragraph (c) of this section apply.

(1) Modification of conservation objectives. NMFS is authorized, through an action issued under § 660.411, to modify a conservation objective if—

(i) A comprehensive technical review of the best scientific information available provides conclusive evidence that, in the view of the Council, the Scientific and Statistical Committee, and the Salmon Technical Team, justifies modification of a conservation objective or

(ii) Action by a Federal court indicates that modification of a conservation objective is appropriate.

(2) ESA-listed species. The annual specifications and management measures will be consistent with NMFS consultation standards or NMFS recovery plans for species listed under the Endangered Species Act (ESA). Where these standards differ from those described in FMP Table 3-1, NMFS will describe the ESA-related standards for the upcoming annual specifications and management measures in a letter to the Council prior to the first Council meeting at which the development of those annual management measures occurs.

(b) Annual Catch Limits. Annual management measures will be designed to ensure escapement levels at or higher than ACLs determined through the procedures set forth in the

FMP.

(c) De minimis control rules. Klamath River fall Chinook and Sacramento River fall Chinook salmon have the same form of de minimis control rule described in the FMP, which allows for limited fishing impacts when abundance falls below S_{MSY} . The control rule describes maximum allowable exploitation rates at any given level of abundance. The annual management measures may provide for lower exploitation rates as needed to address uncertainties or other year-specific circumstances. The de minimis exploitation rate in a given year must also be determined in consideration of the following factors:

- (1) The potential for critically low natural spawner abundance, including considerations for substocks that may fall below crucial genetic thresholds;
- (2) Spawner abundance levels in recent years;
- (3) The status of co-mingled stocks;
- (4) Indicators of marine and freshwater environmental conditions;
- (5) Minimal needs for tribal fisheries;
- (6) Whether the stock is currently in an approaching overfished condition;
- (7) Whether the stock is currently overfished;
- (8) Other considerations as appropriate.
- (9) Exploitation rates, including de minimis exploitation rates, must not jeopardize the long-term capacity of the stock to produce maximum sustained yield on a continuing basis. NMFS expects that the control rule and associated criteria will result in decreasing harvest opportunity as abundance declines and little or no opportunity for harvest at abundance levels less than half of MSST.

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